

of tobacco products who removes processed tobacco from the factory premises for any purpose other than for destruction must keep records and submit reports as prescribed in §§ 40.521 and 40.522.

(Approved by the Office of Management and Budget under control number 1513-0068)

EFFECTIVE DATE NOTE: By T.D. TTB-78, at 74 FR 29409, June 22, 2009, § 40.182 was revised, effective June 22, 2009 through June 22, 2012.

§ 40.183 Record of tobacco products.

The record of a manufacturer of tobacco products shall show the date and total quantities of all tobacco products, by kind (small cigars-large cigars; small cigarettes-large cigarettes; chewing tobacco-snuff; pipe tobacco; roll-your-own tobacco):

- (a) Manufactured;
- (b) Received in bond by—
 - (1) Transfer from other factories,
 - (2) Release from customs custody,
 - (3) Transfer from export warehouses, and
 - (4) Transfer from foreign trade zone;
- (c) Received by return to bond;
- (d) Disclosed as an overage by inventory;
- (e) Removed subject to tax (itemize large cigars by sale price in accordance with § 40.22, except that before April 1, 2009, cigars that cost more than \$235.294 may optionally be shown as if the price were \$236 per thousand, and on and after April 1, 2009, cigars that cost more than \$763.222 may optionally be shown as if the price were \$764 per thousand);
- (f) Removed, in bond, for—
 - (1) Export,
 - (2) Transfer to export warehouses,
 - (3) Transfer to other factories,
 - (4) Transfer to a foreign trade zone
- (5) Use of the United States, and
- (6) Experimental purposes off factory premises;
- (g) Otherwise disposed of, without determination of tax, by—
 - (1) Consumption by employees on factory premises,
 - (2) Consumption by employees off factory premises, together with the number of employees to whom furnished,
 - (3) Use for experimental purposes on factory premises,
 - (4) Loss,

- (5) Destruction, and
- (6) Reduction to materials;
- (h) Disclosed as a shortage by inventory; and
- (i) On which the tax has been determined and which are—
 - (1) Received, and
 - (2) Disposed of.

(Approved by the Office of Management and Budget under control number 1512-0358)

[T.D. ATF-421, 64 FR 71923, Dec. 22, 1999, as amended by T.D. ATF-424, 64 FR 71931, Dec. 22, 1999; T.D. ATF-420, 64 FR 71940, Dec. 22, 1999; T.D. TTB-75, 74 FR 14482, Mar. 31, 2009]

§ 40.184 Record of removals subject to tax.

(a) *Requirement.* Every manufacturer of tobacco products must keep a record of tobacco products removed from the factory subject to tax. The manufacturer must make entries in this record at the time of removal. The record for each removal must show:

- (1) The date of removal,
- (2) The name and address of the person to whom shipped or delivered,
- (3) The kind and quantity of tobacco products removed, and
- (4) For large cigars, show the sale price (if the sale price is more than \$235.294 per thousand before April 1, 2009, or more than \$763.222 per thousand on and after April 1, 2009, you may place a note to that effect in the record instead of the actual price).

(b) *Exceptions.* (1) The record of removal may consist of the manufacturer's commercial documents, such as copies of invoices, rather than records prepared expressly to meet the requirements of this section. If commercial documents are used, they must be kept at the factory, contain all the details required by this section, and be clear and accurate. Commercial documents that do not show specifically the tax classification of tobacco products (including sale price of large cigars) are still acceptable if they contain adequate information for an appropriate TTB officer to readily ascertain the applicable tax.

- (2) Where tobacco products are delivered within the factory directly to the

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consumer, the record need not show the name and address of the consumer.

(Sec. 2128(c), Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5741))

[T.D. ATF-420, 64 FR 71941, Dec. 22, 1999, as amended by T.D. TTB-75, 74 FR 14483, Mar. 31, 2009]

§ 40.185 Retention of records.

All records required to be kept under this part, including copies of authorizations, claims, inventories, notices, reports, returns and schedules, shall be retained by the manufacturer for three years following the close of the calendar year in which filed or made, or in the case of an authorization, for three years following the close of the calendar year in which the operation under such authorization is concluded. Such records shall be kept in the factory or a place convenient thereto, and shall be made available for inspection by any appropriate TTB officer upon his request.

(72 Stat. 1423; 26 U.S.C. 5741)

§ 40.186 Record in support of transfers in bond.

Every manufacturer of tobacco products shall keep a supporting record of tobacco products transferred in bond to or received in bond from other factories, and shall make the entries therein at the time of each receipt or removal of such products. Such supporting records shall show the date of receipt or removal, the name of the manufacturer and address of the factory from which received or to which removed or the permit number of such factory, and the kind and quantity of tobacco products. Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each receipt and removal, in such orderly manner that the information may be readily ascertained therefrom,

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such copies will be considered the supporting record required by this section.

(Approved by the Office of Management and Budget under control number 1512-0358)

(72 Stat. 1423, as amended; 26 U.S.C. 5741)

[T.D. 6871, 31 FR 35, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-172, 49 FR 14943, Apr. 16, 1984; T.D. ATF-232, 51 FR 28081, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

§ 40.187 Record of sales prices of large cigars.

Every manufacturer of tobacco products who removes large cigars from the factory shall keep such records as are necessary to establish and verify the price for which the cigars are sold, in accordance with § 40.22. The record shall be a continuing one of each brand and size of cigar so that the sale price on which the tax is based may be readily ascertained.

[T.D. ATF-307, 55 FR 52743, Dec. 21, 1990. Redesignated and amended by T.D. ATF-420, 64 FR 71941, Dec. 22, 1999; T.D. ATF-420, 65 FR 1676, Jan. 11, 2000]

INVENTORIES AND REPORTS

§ 40.201 Inventories.

Every manufacturer of tobacco products shall make true and accurate inventories on Form 5210.9, which inventories shall include all tobacco products and processed tobacco on hand required to be accounted for in the records kept under this part. The manufacturer shall make such an inventory at the time of commencing business, which shall be the effective date of the permit issued upon original qualification under this part; at the time of transferring ownership; at the time of changing the location of his factory; at the time of concluding business; and at such other time as any appropriate TTB officer may require. Each inventory shall be prepared in duplicate, and shall be subject to verification by an appropriate TTB officer. The original of each such inventory shall be submitted to the appropriate TTB officer,